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Facsimile No.: (703) 872-9306   Date: February 13, 2008

From: Thinh V. Nguyen, Reg. No. 42,034

Our Docket No.: 81862P173   Number of pages __10__ including this sheet.

Application No.: 09/496,990   Filing Date: 2/2/2000

Docket Due Date(s): 2/13/2008

Enclosed are the following documents:

☐	Amendment: _____ (__pgs)	☐	Issue Fee Transmittal
☐	Appeal Brief (__pgs)	☐	Notice of Appeal (in duplicate)
☐	Application: _____	☐	Petition for: _____
	(__pgs) w/cover & abstract)	☐	Request for Continued Examination (RCE)
☐	Assignment & Cover Sheet (__pgs)	☒	Reply Brief (__6_pgs)
☒	Certificate of Facsimile	☐	Request & Certification Under 35 USC 122(b)(2)(B)(i)
☐	Continued Prosecution Application (CPA)	☐	Request to Rescind Previous Nonpublication Request
☐	Declaration & POA (__pgs)	☐	Response to Notice of Missing Parts & Formalities Letter
☐	Drawings: __sheets, __ figures	☐	Response to Written Opinion (__pgs)
☐	Extension of Time: _____	☐	Terminal Disclaimer
☒	Fee Transmittal (in duplicate)	☐	Transmittal of Publication Fee Due
☐	IDS & PTO/SB/08 (__pgs)	☒	Transmittal Letter
☐	Other: _____		

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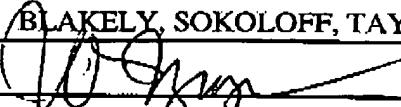
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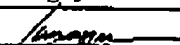
TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application No.	09/496,990
Filing Date	February 2, 2000
First Named Inventor	Man Pak Yip
Art Unit	2155
Examiner Name	Kevin T. Bates

Total Number of Pages in This Submission	9	Attorney Docket Number	81862P173

ENCLOSURES   *(check all that apply)*

☒ Fee Transmittal Form

    ☐ Fee Attached

☐ Amendment / Reply

    ☐ After Final

    ☐ Affidavits/declaration(s)

☐ Extension of Time Request

☐ Express Abandonment Request

☐ Information Disclosure Statement

    ☐ PTO/SB/08

☐ Certified Copy of Priority Document(s)

☐ Response to Missing Parts/ Incomplete Application

    ☐ Basic Filing Fee

    ☐ Declaration/POA

    ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition

☐ Petition to Convert a Provisional Application

☐ Power of Attorney, Revocation Change of Correspondence Address

☐ Terminal Disclaimer

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☐ CD, Number of CD(s)

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Remarks

☐ After Allowance Communication to TC

☐ Appeal Communication to Board of Appeals and Interferences

☒ Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☐ Other Enclosure(s) *(please identify below):*

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Thinh V. Nguyen, Reg. No. 42,034 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	
Date	February 13, 2008

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FEE TRANSMITTAL
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Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT	($)

Complete if Known	
Application Number	09/496,990
Filing Date	February 2, 2000
First Named Inventor	Man Pak Yip
Examiner Name	Kevin T. Bates
Art Unit	2155
Attorney Docket No.	81862P173

METHOD OF PAYMENT *(check all that apply)*

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FEE CALCULATION

Large Entity		Small Entity			
Fee Code	Fee ($)	Fee Code	Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	460	2252	230	Extension for reply within second month	
1253	1,050	2253	525	Extension for reply within third month	
1254	1,640	2254	820	Extension for reply within fourth month	
1255	2,230	2255	1,115	Extension for reply within fifth month	
1401	510	2401	255	Notice of Appeal	
1402	510	2402	255	Filing a brief in support of an appeal	
1403	1,030	2403	515	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	810	1809	405	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	810	2810	405	For each additional invention to be examined (37 CFR § 1.129(b))	

Other fee (specify) _____

SUBTOTAL (2) ($)

SUBMITTED BY

Name (Print/Type)	Thinh V. Nguyen	Registration No. (Attorney/Agent)	42,034	Telephone	(714) 557-3800
Signature				Date	02/13/08

Based on PTO/SB/17 (12-04) as modified by Blakely, Sokoloff, Taylor & Zalman (ser) 12/15/2004.
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☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT	($)

Complete if Known

Application Number	09/496,990
Filing Date	February 2, 2000
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Examiner Name	Kevin T. Bates
Art Unit	2155
Attorney Docket No.	81862P173

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1810	810	2810	405	For each additional invention to be examined (37 CFR § 1.129(b))	

Other fee (specify) _____

SUBTOTAL (2) ($)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Thinh V. Nguyen	Registration No. (Attorney/Agent)	42,034	Telephone	(714) 557-3800
Signature				Date	02/13/08

Based on PTO/SB/17 (12-04) as modified by Blakely, Sokoloff, Taylor & Zatman (wtr) 12/15/2004.
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Reply Brief filed February 13, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No.	:	09/496,990	Confirmation No. 6948
Applicant	:	Man Pak Yip	
Filed	:	February 2, 2000	
TC/A.U.	:	2155	
Examiner	:	Kevin T. Bates	

Docket No.   :   081862.P173
Customer No.   :   8791

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Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

In response to the Examiner's Answer dated December 13, 2007, Applicant submits, the following Reply Brief pursuant to 37 C.F.R. § 41.41 for consideration by the Board of Patent Appeals and Interferences. Please charge any additional fees or credit any overpayment to our deposit Account No.02-2666. A duplicate copy of the Fee Transmittal is enclosed for this purpose.

Reply Brief filed February 13, 2008

REMARKS

Applicant is responding to the Examiner's Answer according to the organization (e.g., paragraph numbering) in the Examiner's Answer.

(9) Grounds of Rejection:

The Examiner's Answer states that the rejection of claims 10-11, 22-23, 34-35, 45-46, and 57-58 has been removed (Examiner's Answer, page 3, paragraph number 9)). However, on the same page, the Examiner's Answer states that claims 1-9, 12-21, 24-33, 36-45, 48-57, and 60 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,490,249 issued to Aboul-Magd. Applicant believes that the correct claim numbers should be 10-11, 22-23, 34-35, 46-47 (not 45-46), and 58-59 (not 57-58). Since these claims are now objected to as dependent on a rejected claim, the appeal of these claims becomes moot. However, Applicant maintains the appeal for the rejected claims.

(10) Response to Argument:

1. The Examiner contends that column 1, lines 22-29 and column 4, lines 60-63, disclose that the description includes a definition about how much bandwidth for the connection the new connection is going to need or "book" (Examiner's Answer, page 7, lines 14-16). Applicant respectfully disagrees. For ease of reference, the cited excerpts are copied below.

> "The admission control function is often performed based on some expectation of the user's traffic profile. This profile is supplied to the network at the set up phase in the form of a limited set of traffic characteristics such as peak rate, sustained rate, and burst size. The values assigned to this set of traffic characteristic are often based on the user's best guess or some default values supplied by the manufacturers or the service providers or both." (Aboul-Magd, col. 1, lines 22-29)

> "The input to the EBR algorithm is the traffic parameters received in the set up message of the signaling protocol. Those parameters usually are tailored to the service offered." (Aboul-Magd, col. 4, lines 60-63)

As seen from the above, Aboul-Magd merely discloses values assigned to the traffic characteristics are based on the user's best guess or some default values, or the

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traffic parameters are tailored to the service offered. None of these is related to description of the connection request including a booking factor.

2. The Examiner contends that the second estimator deals with estimating how much traffic is currently being used in the network by the previously admitted connections (Examiner's Answer, page 7, lines 18-22). However, Aboul-Magd merely discloses the actual utilization is measured as the average load on the link per service class measured in a regular interval basis (Aboul-Magd, col. 5, lines 3-5). The "average load per service class measured in a regular interval basis" is not the same as "measurements of data streams arriving at queues and the booking factor" as claimed.

3. The Examiner contends that Aboul-Magd also teaches that the addition requests are processed, citing Figure 4 (Examiner's Answer, page 8, lines 7-10). However, Figure 4 merely shows the accept or reject decision is based on the two conditions $w_1 \times (\mu + EBR_c < ubf \times pool)$ AND $w_2 \times \{ \Sigma EBR_c < obf \times pool)$ (Aboul-Magd, col. 6, lines 19-25). This is not the same as the product of the ECR and the booking factor as argued in the appeal brief.

4. The Examiner failed to show that Aboul-Magd discloses a resource allocation rule using a hierarchical resource organization.

5. The Examiner contends that the reference also teaches an updated resource reservation using the ECR, booking factor, and the estimated measured utilization, citing Column 6, lines 60-67 (Examiner's Answer, page 8, lines 11-15). For ease of reference, the cited excerpt is copied below:

> "FIG. 4 shows the steps taken upon the arrival of a new request to determine if it could be admitted to the network. Upon the arrival of the new request, its EBR_c is calculated based on either the delay or the loss formula as described before. The computed value is then added to the measured pool utilization, m and the sum of the EB_c of the connections that have been already admitted to the network The two resulting values are then compared to the ubf*pool and obf*pool respectively." (Aboul-Magd, col. 6, lines 60-67)

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As seen from the above, Aboul-Magd merely discloses calculating the EBR upon the arrival of a new request, not a resource updater to update a resource reservation using the ECR. Calculating the EBR is not the same as updating a resource reservation.

6. Regarding claim 6, the Examiner contends that for the system to determine which CAC criterion or description corresponds to what number of service class there must be some correspondence between identifying which level of necessary bandwidth is given to which criterion (Examiner's Answer, page 9, lines 1-3). The Examiner then concludes that "[t]his is equivalent to the QoS descriptor indexing the scale factor", and "[t]his is the same as a look up table; one identifies the criterion then 'looks up' what service class this corresponds to" (Examiner's Answer, page 9, lines 3-7). Applicant respectfully disagrees. Since Aboul-Magd does not explicitly disclose using a look-up table, the Examiner's argument seems to rely on the theory of inherency. Applicant submits that the Examiner's reliance of the theory of inherency is inappropriate. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 193). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir.1999). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (*emphasis in original*). Here, the Examiner failed to provide a basis in fact and/or technical reasoning to reasonably support the determination that the use of a scale factor or a look up table necessarily flows from the teachings of Aboul-Magd. Even if there is some correspondence between identifying which level of necessary bandwidth is given to which criterion, this does not mean that a look up table necessarily is used. For example, a function may be used to provide the correspondence. Furthermore, the Examiner has not addressed the aspect that the entries being indexed by the connection descriptor.

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Reply Brief filed February 13, 2008

7. Regarding claims 7, 8, and 9, the Examiner contends that <u>Aboul-Magd</u> teaches that the CAC criterion determines to which service class the connection gets mapped and the CAC function tries to measure a constant bit flow but takes into account variable traffic (<u>Examiner's Answer</u>, page 9, lines 16-20). As discussed above, <u>Aboul-Magd</u> does not disclose a scale factor and a look up table. Accordingly, <u>Aboul-Magd</u> cannot disclose the look up table being one of a CBR and VBR look up tables. Furthermore, <u>Aboul-Magd</u> merely discloses service classes being mapped to different bandwidth pools without regard to whether it is CBR or VBR.

8. Regarding claim 12, the Examiner contends that <u>Aboul-Magd</u> finds the actual network measurements, but <u>Aboul-Magd</u> also teaches mathematical calculations of the QoS and utilization of the network (<u>Examiner's Answer</u>, page 9, lines 16-20). However, the Examiner failed to show that <u>Aboul-Magd</u> discloses estimating a minimum resource needed for the admitted connection.

9. The Examiner contends that the actual function of estimating is never performed thus it is in the form of non-functional descriptive language and should receive limited patentable weight (<u>Examiner's Answer</u>, page 11, lines 13-19). Applicant respectfully disagrees. The language "a first estimator to estimate" recites positively an element to perform a specific function. The Examiner has not cited any authority, either from the case laws or the MPEP, to indicate that such a language corresponds to a non-functional descriptive language.
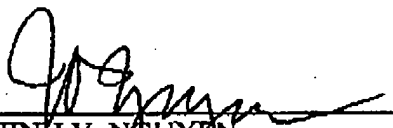
Reply Brief filed February 13, 2008

CONCLUSION

Applicant respectfully requests that the Board enter a decision overturning the Examiner's rejection of all pending claims, and holding that the claims satisfy the requirements of 35 U.S.C. §102.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: February 13, 2008

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